

# Effects of Wild and Scenic River Designation from the Private Landowner's Perspective



# Four Key Principles to Remember:

1. The W&SR Act does not create federal regulatory authority over private land.
2. The W&SR Act directs all federal agencies to have the same goal – protection of designated rivers.
3. Your most direct interaction with the W&SR Act will occur if you need land use authorization, permits, funding, or technical assistance from federal agencies.
4. Many of the protective provisions of the W&SR Act come into play after designation by Congress, and do not apply on streams designated as suitable during the BLM planning process.



# 1. The W&SR Act does not create federal regulatory authority over private land.



- Land use control remains with state and local governments.
- The W&SR Act creates no binding control on local governments.
- The federal managing agency will coordinate on zoning /ordinances with local governments.
- The federal managing agency may offer technical assistance to local governments to deal with projects that may affect W&SR values.

# 1. The W&SR Act does not create federal regulatory authority over private land.

Private owners have complete control over :

- Selling or leasing land and improvements
- Leaving property to heirs
- Donating property or easements to third parties
- Subdividing land, pursuant to local government zoning
- Land management practices (agriculture, grazing, weed control, etc.) subject to local zoning and ordinances





## 2. The W&SR Act directs all federal agencies to protect designated rivers.

Agencies involved in river corridor management:

- EPA – water quality
- Army Corps of Engineers – wetland dredge/fill permits
- Federal Energy Regulatory Commission – hydroelectric and thermal facility permits
- Natural Resource Conservation Service - funding / tech assistance for agricultural projects
- Federal Highway Admin.— road funding/permitting



### 3. Your most direct interaction with the W&SR Act will occur if you need permits from federal agencies.

- Existing permits and uses on federal lands are allowed to continue.
- New permits or renewal of existing permits must protect W&SR values.
- Federal agencies required to protect free-flowing nature, water quality, and outstandingly remarkable values.





#### 4. Many of the protective provisions of the W&SR Act come into play after designation by Congress.

For an eligible or suitable stream:

- BLM cannot take actions that harm W&SR values.
- Other agencies obligated to disclose potential impacts of projects they authorize.
- Other agencies can take actions that create impacts.

For a designated stream:

- No federal agencies may take actions that harm free-flowing nature, water quality, or ORVs



# Wild & Scenic River Designation: Access Implications



- Existing access routes over federal lands to private lands are allowed to continue
- New access routes (or improvements to existing routes) over federal lands can be authorized under recreational and scenic classifications, but must protect W&SR values



# Wild & Scenic River Designation: Access Implications



- Designation does not create public access to private lands
- State law regarding public access continues to apply – e.g. river access provisions
- Landowners may deny access to private lands and may charge for hunting and fishing access

# Wild and Scenic River Designation: Recreation Implications

- Active BLM management of recreation: designated entry points, maps, signs, law enforcement
- Active BLM management of camping locations, motorized and non-motorized routes
- Hunting and fishing allowed on federal lands under state laws
- BLM has no authority to compensate private landowners for problems caused by public access, but can work to minimize problems





# Wild & Scenic River Designation: Grazing Implications



- Grazing permits on federal lands can be created/renewed
- Permit conditions and management plan must be reviewed to insure consistency with maintenance of ORVs and water quality
- New projects (water developments, fences, etc.) allowed when consistent with W&SR values

# Wild and Scenic River Designation: Possible Benefits

- More unified planning for the river corridor – anticipation of inevitable changes in population and use
- W&SR management can accommodate many existing and future uses
- Increased tourism, recreation, and economic development based on those uses
- Possible increase in property values as river values become more well known





# Wild and Scenic River Designation: Water Rights



# Private Water Rights in Eligible, Suitable or Designated Segments:

- Operation, maintenance and access to existing water facilities continues as historically implemented
- Changes to existing facilities and new facilities can be approved if consistent with ORVs, classification, and water quality parameters



# Wild & Scenic River Designation: Conditional Water Rights



- May be developed, provided they are consistent with classification and protection of W&SR values
- New water storage projects not allowed
- Significant new infrastructure not allowed in segments classified as wild

# Wild & Scenic River Process: Water Exchanges



- Unless segment is designated and has a water right, BLM has no basis to object to exchanges that deplete flows in segment.
- Once designated, BLM could object to exchanges that deplete flows necessary to support ORVs.



# Wild & Scenic River Process: Federal Water Rights



- Congressional designation has historically included a federal reserved water right.
- Agency determination of suitability does not include a water right.

# Wild & Scenic River Process: Federal Water Rights

- If Congressional designation occurs, the managing agency quantifies the amount and timing of water necessary to support ORVs.
- Water right adjudicated in state court – BLM has been enjoined under McCarran Amendment in Colorado, and must use state water courts.
- The federal water right receives a priority equal to the date of designation – **junior to all existing rights!**



# Any Questions?

